

U.S. DEPARTMENT OF LABOR

**SECRETARY OF LABOR
WASHINGTON, D.C.**

In the Matter of)	
)	
MALCOLM SOUNESS)	
Complainant)	
)	
v.)	Case No. 81-CET-312
)	
VERMONT CETO)	
Respondent)	

FINAL DECISION OF THE SECRETARY OF LABOR

Preliminary Statement

This proceeding arose under the Comprehensive Employment and Training Act, as amended (Act or CETA), 29 U.S.C. 801 et seq., and the regulations issued thereunder and in effect at the appropriate times (Regulations), at 20 and 29 CFR. On May 4, 1983, pursuant to the Regulations at 20 CFR 676.91(f) and following a request **therefor** by the prime sponsor (Vermont CETO). I issued an Order asserting jurisdiction in this case and vacating and staying the decision issued by a U.S. Department of Labor (USDOL) Administrative Law Judge (ALJ) on April 4, 1983, pending my final decision. I subsequently issued a Notice of Briefing Schedule inviting the parties to submit briefs, and setting time limits for their submission. The briefs have been received, and are now before me for consideration together with the record of the case.

Issue

The sole issue presented by the parties for consideration by me is: Whether the ALJ erred in concluding that the Grant

Officer's dismissal of complainant's case for failure to file a timely appeal from the decision of the prime sponsor was improper.

Findings and Conclusions

1. Complainant, a Title VI participant in a CETA program of the prime sponsor, complained that his rights thereunder were violated. On June 16, 1980, complainant, believing that the prime sponsor's hearing procedure was taking too long, brought an action regarding his grievance in a U.S. District Court. On October 9, 1980, while the court action was pending, the prime sponsor issued a decision against complainant accompanied by a proper notification to him of his right to file a complaint with the USDOL Grant Officer. The notice stated that he had 30 days in which to file such a complaint. Several months later, the District Court dismissed complainant's action on the ground of non-exhaustion of administrative remedies. Only then, on May 20, 1981, did complainant file a complaint with the USDOL Grant Officer. On June 23, 1981, the Grant Officer dismissed the complaint on the ground that it was untimely filed. On June 29, 1981, complainant submitted to the USDOL Office of Administrative Law Judges (OALJ) a request for an ALJ hearing on the matter. On April 4, 1983, an ALJ issued a decision reversing the Grant Officer's dismissal and remanding the case to the Grant Officer for further proceedings. The ALJ's rationale was that --

"The prime sponsor's notice of appeal rights did not state

that an appeal to the Grant Officer was the complainant's exclusive remedy. Thus, the complainant had no reason to believe that if he had filed an action in another forum, he would forfeit his right to subsequently appeal to the Grant Officer."

Under such circumstances, the ALJ ruled, complainant was entitled to file a complaint with the Grant Officer more than six months after receipt of the prime sponsor's decision. Having so ruled, the ALJ then remanded the case to the Grant Officer for further proceedings.

2. The Regulations in effect in October and November 1980, provide, at 20 CFR 676.86(b), that --

"... Every complaint [to the Grant Officer] shall be filed . . . no later than 30 days from the date of receipt of the written decision or notice required by § 676.83 or § 676.84" (emphasis supplied) 44 Fed. Reg. 20034 (No. 65, April 3, 1979.1/

3. That language, establishing a 30-day time limit for the filing of such complaints, is clearly mandatory; and the ALJ's arguments in favor of treating this case as an exception to that time limit, are wholly inapposite. Specifically:

(1) The fact that the prime sponsor's notice of appeal rights did not state that an appeal to the Grant Officer was complainant's exclusive remedy is inapposite because, whether or not such a complaint was his exclusive remedy, complainant --

(a) Was notified by the prime sponsor that he had only 30 days in which to submit a complaint to the Grant Officer, and

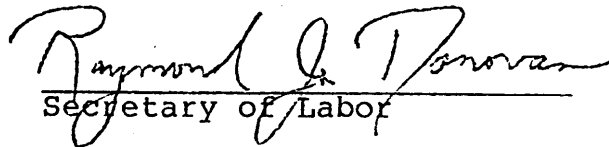
1/ Section 676.83 refers, at par. (b)(9), to "[a] written decision from the [CETA-recipient-designated] hearing officer to the complainant(s) and other interested parties," and, at par. (b)(10), to, "[w]here a complaint procedure provides for a recipient's review of the hearing officer's decision, ... a final written decision." Section 676.84 refers, at par. (b)(3), to "[w]ritten notification of the disposition of the complaint.

- (b) Was not prevented by the **pendency** of his U.S. District Court case from filing a complaint with the Grant Officer during that time period.
- (2) The assertion that complainant had no reason to believe that if he had filed an action in another forum, he would forfeit his right to subsequently appeal to the Grant Officer --
- (a) Is inapposite -- if that assertion means subsequent to the filing of an action in another forum -- because such filing in no way affected his, right to submit a complaint to the Grant Officer; and
- (b) Is incorrect -- if that assertion means subsequent to the disposition of the action in another forum more than 30 days after complainant's receipt of the prime sponsor's decision -- because complainant was clearly warned by the notice of appeal rights that any complaint to the Grant Officer must be filed within that 30-day period.

4. In view of the fore-going, I am persuaded that the Grant Officer's dismissal of complainant's complaint as untimely tendered was correct and that the **ALJ's** reversal of it was not.

Order

Accordingly, it is Ordered that 'the Grant Officer's dismissal of the complaint IS AFFIRMED.

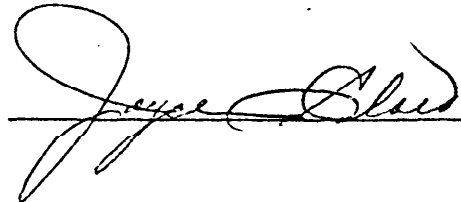

Secretary of Labor

Dated: _____
Washington, D.C.

CERTIFICATE OF SERVICE

CASE NAME: Malcolm Souness v. Vermont CETO
Case No.: 81-CET-312
Document: Final Decision of the Secretary of Labor
Preliminary Statement

Copies of the foregoing document were mailed to the persons listed below on March 30, 1984.



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